

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6652

PETITION OF GEORGETOWN PREPARATORY SCHOOL, INC.

OPINION OF THE BOARD
(Hearing Held: April 15, 2020)
(Effective Date of Opinion: May 1, 2020)

Case No. A-6652 is an application for a height variance under Section 59.7.3.2 of the Montgomery County Zoning Ordinance. Per the Building Permit Denial in the record at Exhibit 6, the proposed construction of a new school building (residence hall) with a 61.5 foot mean height and a 76.5 foot peak height requires a variance of 31.5 feet from the thirty (30) foot mean height limit, or a variance of 41.5 feet from the thirty-five (35) foot peak height limit, in accordance with Section 59.4.4.8.B.3 of the Zoning Ordinance.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on Wednesday, April 15, 2020. All participation was done via Microsoft Teams. Patrick O'Neil, Esquire, appeared on behalf of Petitioner Georgetown Preparatory School, Inc. (the "School"). He called several witnesses from the School, including Rev. James R. Van Dyke, S.J., President, Christopher Lapp, Director of Campus Management and Planning, and Mark Kingora, Grounds Manager. Mr. O'Neil also called Joanna Schmickel, AIA, LEED AP, Principal with cox graae + spack architects, as a witness. In addition, Tom Murphy of the Wickford community, and Jan Gibson, who resides in the Crest of Wickford community, also testified.

The subject property is Parcel 1, Georgetown Prep School Subdivision, located at 10900 Rockville Pike, North Bethesda, Maryland, 20852, in the R-90 Zone.

Decision of the Board: Variance **GRANTED**.

EVIDENCE PRESENTED

1. The Statement of Justification ("Statement"), in the record at Exhibit 3, describes the subject property and surrounding communities as follows:

The School's campus (*i.e.*, the Property) consists of approximately 3,933,657 square feet (90.3 acres) of tract area located at the northwest quadrant of the intersection of Rockville Pike and Tuckerman Lane in North Bethesda, Maryland. A Site Plan - Aerial Overlay (**Exhibit A**) shows that the Property is bordered on the west by condominium and townhouse residences known as Tuckerman Station, which is separated from the Property by the Bethesda Trolley Trail. The Wickford single family community and the Wickford Crest condominium community are to the north. Across Rockville Pike on the east are the Strathmore Place and Symphony Park residential communities, and Strathmore Hall. On the south is the Tuckerman Heights townhouse community and the Inigo's Crossing 473-unit apartment complex, which is located on approximately 15 acres of Petitioner's property. The Property was platted in 1993 at Plat No. 19090, which is attached as **Exhibit B**.

Pursuant to Zoning Map Amendment No. G-796, approved by the Montgomery County Council sitting as the District Council on October 29, 2002, the 15-acre Inigo's Crossing portion of the Property was rezoned from the R-90 Zone to the PD-28 Zone. The remaining 75.3 acres of the School campus continues to be zoned R-90. (See the certified copy of the official zoning vicinity map attached to the Petition). The School portion of the Property is subject to a religious exemption from Zoning Ordinance requirement to obtain conditional use approval for the educational institution use (see Section 59.3.4.5.B). The School is otherwise subject to the applicable development standards in the R-90 Zone, including height limits.

As shown on the Petitioner's Existing Site Conditions Plan (**Exhibit C** and **Figure 1**, a modification of Exhibit C, below), the Property is developed with administrative, athletic, classroom and dormitory buildings located in the interior of the campus. These structures are set back approximately 768 feet off of Rockville Pike (Boland Hall), 376 feet from the southern property line (Hanley Athletic Center), 206 feet from the western property line (George Center), and 917 feet from the northern property line (Gunlocke Hall). Athletic fields, an 18-acre golf course, a lacrosse and football stadium, a tennis center, forest conservation easements, and a campus loop road (with related parking facilities) serve to buffer school activities from the surrounding communities.

2. The variance application, in the record at Exhibit 1, describes the property and the practical difficulty now facing the School succinctly, stating that:

The property is a 90.3 acre, 100-year-old campus with existing structures that exceed the current prescribed building heights. ... If the variance is not granted, the Petitioner would have to locate desired uses closer to residential neighbors and in surrounding open spaces, which should be maintained per the N. Bethesda Garrett Park Master Plan.

3. The Statement refers to the proposed construction as the "Project." It states that the proposed new building is intended to provide a modern residential hall for the housing and care of those students who reside at the School. The Statement indicates that the School is seeking to construct a 5-story replacement dormitory in the center of its campus

to house all of its residential students, with freshman housed on the second floor, sophomores on the third floor, juniors on the fourth floor, and seniors on the top floor. The Statement states that this consolidation of residential students in a single (new) building will allow for "much needed renovation and repurposing" of the existing residential buildings. It also indicates that the "integration of the School's residential program within the larger life of the School community" will solve a problem that has been raised by applicable accrediting entities. See Exhibit 3.

The Statement makes clear that the new building is "entirely for the benefit of current students" and "is not to accommodate increased enrollment or dorm residents." In addition to dorm rooms, the Statement indicates that the proposed new building will include apartments for dorm parents, who currently live in dorm-style rooms and share bathroom facilities with other dorm parents. The Statement states that the first floor of the proposed new dormitory will include an infirmary, dorm-related faculty offices, a common lounge, a multi-purpose space for class assemblies, and a casual-dining kitchen to support the residential community. The Statement notes that "[t]he critical goals of residential integration could not be met if the first floor services were provided elsewhere on campus. It should also be noted that housing students on a first floor would be both a security and supervisory risk." See Exhibit 3. Finally, the Statement states that as designed, "[t]his residential housing model creates synergies for optimal growth and maturity among the boarding residents and is deemed to be a boarding industry best practice."¹

4. The Statement notes that the new building will be "compatible, in terms of height and massing, with existing campus structures," but "taller than what is otherwise permitted in the underlying R-90 Zone." The Statement describes the existing buildings on campus, including when they were constructed, and notes that five of these structures exceed the current height limitations:

The high point of the Property is in the vicinity of the School's most iconic building, Boland Hall, which was built in 1919 and fronts on Rockville Pike. This building currently includes a 72-room dormitory for students in grades 10-12, a school-wide dining room and administrative offices. It defines the eastern edge of the campus structures, that otherwise form an academic quad area behind Boland Hall. Property slopes gently westward in the area of the Athletic Center, the George Center and the Football Stadium.

¹ The Statement further elaborates on the integration of students that the School hopes to achieve with the new building, stating that: "Locating residential and day student service in the first floor of the Project is another important component of the residential housing model. The first floor student lounge with the residential duty office (which every resident student will have to traverse to access his floor) is designed as a space where resident students can host day students and other guests. It is one of the strategic spaces dedicated to breaking down the divide between the resident and day students. The Assembly Hall is located here because it is also a node where the students – resident and day – can meet in a common facility (a facility that we currently lack for class and or faculty meetings, resident meetings, small recitals, lectures, etc.). It is also seen as an ideal setting for common resident entertainment opportunities such as watching a movie or the World Cup, etc." See Exhibit 3.

Other buildings on campus include a chapel built in 1934 and MacKavanagh Hall that dates from 1967 and currently contains classrooms and administrative space. The 13-room dormitory for 9th graders, Gunlocke Hall, was built in 1970 and in 1974 the Haas Humanities Building, which contains classrooms, a theater and administrative uses, was constructed. The Hanley Center for Athletic Excellence, built in 2006, offers collegiate-level athletic facilities. The construction of the Hanley Center enabled the School in 2010 to convert its former gymnasium (built in 1960) into a first-rate learning facility, the George Center, which includes a library, classrooms, a recording studio, a student union, several offices, and the boardroom.

Relevant to this Petition, 5 School structures (Boland, Haas, MacKavanagh, Hanley and George) exceed the residential height limits currently allowed for the zone. It is unclear from our review of available building permits and prior zoning ordinances how these buildings were approved for heights, above the prevailing heights for residential housing units, without first having obtained variances. In any event, we note that these buildings and any related uses, including the dormitory use, are deemed to be conforming structures/uses pursuant to Section 59.7.7.1.A of the Zoning Ordinance because they were in existence on October 30, 2014 when the current Zoning Ordinance became effective.

See Exhibit 3. The Statement later provides the heights of these existing buildings, and concludes that the visual impact of the height of the proposed new building will be mitigated by distance, and that "when viewed in the context of other School buildings, the Project is compatible with the existing skyline of the School (see [Exhibit 5(b)])":

The School's first building, Boland Hall, is approximately 50 feet tall by current zoning measurement standards. As the School has grown, new campus structures were constructed at compatible heights: Both MacKavanagh Hall and Haas Humanities Building are approximately 59 feet tall. More modern construction, Hanley and George, are 38 feet and 42 feet tall, respectively. In addition, the heights of the Chapel tower and the Boland Hall cupola are approximately 96 feet and 78 feet, respectively. From a skyline perspective, the top of the new dorm (elevation 390.5') is only 12.05 feet taller than the ridge line at MacKavanagh Hall (elevation 378.45') and 30.1 feet shorter than the chapel tower (elevation 420.6'). As a result, the height of the proposed Project blends in with current campus structures and is otherwise not discernable from adjacent viewpoints.

5. The Statement explains that the size of the new building is controlled by "the required operational needs of the dormitory program." See Exhibit 3. The Statement notes that "[t]he evolution of buildings on the Property dictates that the Project be located in the proposed site," and states that the proposed construction will form a second "quad" at the center of campus, both in the physical sense and in a community sense, which will help make the new dormitory and other existing buildings a focus of campus life:

As noted above, the School has been at the Property for over 100 years. Its first building, Boland Hall, was built in 1919 and set the eastern building setback for the Property. Subsequent buildings, MacKavanagh and Haas, were built to form the academic quad center of campus. This quad was further enhanced by the

completion of the Hanley and George Centers on the western boundary of the academic quad, which fully framed the space and secured it as a campus focal point. Other core School buildings, the Chapel and Gunlocke Hall, were otherwise separated from campus activities.

The Project integrates the smaller Chapel and Gunlocke buildings into the lifeblood of the School by forming the western boundary of an otherwise amorphous student and cultural quad. The size and use of the Project ensure that both boarding and day students will activate this area of the campus as students visit their boarding classmates, utilize dormitory services and visit the now-visible Chapel more regularly. The future renovation of Gunlocke Hall is also expected to include student services. The Project is essential to the creation of this new Chapel Quad for the spiritual and emotional needs of students, as a complement to the well-established academic quad. Also, as discussed above, the location of the Project in alignment with the Hanley and George Centers is architecturally important and otherwise essential to creating the north/south boulevard that defines the new vision for the campus.

The purpose of the Project is to provide a much needed, modern residential hall for the housing and care of the School's boarding population. The Project is located on the only available space on the Property to effectively serve this function, while activating buildings that have historically been outside the center of campus activities. The Project is also centrally located in the vicinity of existing parking and directly accessible for delivery trucks that will enter the campus from Rockville Pike. The Project's size is dictated by the required operational needs of the dormitory program.

6. The Statement at Exhibit 3 states that the size and historic evolution of this property, and the resultant location proposed for the new dormitory, arise from the original siting of campus structures, and are not the result of actions by the Petitioner:

The size and 100-year evolution of the Property are organic circumstances that have combined to dictate where and how the Project is located. The locations of current campus structures direct that the Project be built in a centrally located point on the Property. This also ensures that the Project is effectively shielded from neighboring residential properties by extraordinary distances and with a variety of land buffers. The current campus configuration also requires that the Project be located in coordination with the Chapel to create a spiritual and cultural focal point for the School.

Thus, the unique circumstances and conditions on the Property which justify variance relief arise directly from the original siting of campus structures on the Property, the manner in which the campus was directed to grow in respect to Boland Hall, and the current and future need to protect the surrounding community from campus activities. None of these unique circumstances and conditions are the result of actions that have been taken by the Petitioners.

7. In asserting that the requested height variance is the minimum necessary to overcome the practical difficulties imposed by full compliance with the Zoning Ordinance, the Statement in the record at Exhibit 3 states the following:

The Petitioner has designed the Project to accommodate a modern high school dormitory, which requires the housing of all students by grade in one building. This need and related student body integration requirements are discussed at great length above. The Project further requires the provision of dorm and student amenity spaces on the first floor to foster integration with day students and for the safety of dorm residents. Notably, the separation between student services and housing ensures that no high school student would live on the first floor - eliminating easy ingress and egress during nighttime hours. This efficiency of uses is also directed by the applicable areawide Master Plan, discussed in Section I(c) above, requiring the retention of open space as much as possible. A dispersed dormitory program would require the siting of various dorm functions in surrounding open spaces and closer to adjacent neighbors. Any efficiency of building functions and learning adjacencies would also be lost. Thus, the requested variance of 41'-6" is the minimum relief necessary to overcome the practical difficulties that arise from the placement of the proposed Project on the Property, and is also the minimum relief necessary to guarantee the protection of the general health, safety, and welfare of the public.

8. The Statement at Exhibit 3 explains that the North Bethesda/Garrett Park Master Plan (1992) makes specific recommendations regarding the School's property, and that the proposed construction is consistent with those recommendations, as follows:

The Property is located within the 1992, Approved and Adopted North Bethesda Garrett Park Master Plan (the "Master Plan"). The Master Plan makes specific land use and zoning recommendations for several properties that are identified as large land users, including Georgetown Preparatory School, which is described as one of the last large open spaces in the Master Planning Area. The specific recommendations for the School include maintaining the school use and supporting reasonable future renovation. It also calls for maintaining as much of the site's existing open space as possible. This helps protect the environmental character of the site and maintain the desired campus-like environment. (See Master Plan, Pages 80; 69-70).

* * * * *

As discussed above, the Master Plan for the Property recommends the continuation of the School use and supports reasonable future renovation. It also calls for maintaining as much of the site's existing open space as possible. The proposed Project constitutes the type of future renovation anticipated by the Master Plan. The dormitory enhances the campus environment by providing, for the first time, a central residence hall for all of the boarding students. It also activates the campus chapel area and creates a new focal point for students' spiritual and cultural growth. The proposed construction respects the Property's open spaces by efficiently combining all residential functions into one building

within the interior of the campus, thereby preserving the surrounding green areas of the Property.

9. The Statement notes that the School met with the leadership of neighboring citizen associations regarding the Project and related campus improvements, stating that the School met with the governing boards of the Tuckerman Station Condo Association, the Tuckerman Heights Homeowners Association, the Tuckerman Station Homeowners Association, and the Wickford Homeowners Association. The Statement lists concerns that were raised (drainage, noise mitigation, screening) and how the School intends to address those concerns. It states that notably, no concerns were raised during those meetings regarding the height of the new building. See Exhibit 3. During the hearing, it was noted that the School had also recently met with community representatives from the Crest of Wickford, as recounted in paragraph 11.

The Statement at Exhibit 3 concludes that the grant of the requested variance, and the resultant construction of the proposed new building, will not be adverse to the use and enjoyment of abutting and confronting properties, as follows:

The proposed residence hall Project will not adversely affect the use and enjoyment of abutting or confronting properties. To the contrary, the location of the building fully protects the use and enjoyment of neighboring properties by ensuring that no noise or activity associated with the new dormitory will be seen or heard by the neighbors, avoiding the potential adverse impacts that would result if the building were constructed closer to the property lines.

10. At the hearing, Rev. James R. Van Dyke, S.J., testified that he was elected President of the School in 2017, and that as President, he is responsible for representing the School externally, working with the Board of Trustees, and fundraising. He distinguished the position of President from that of Headmaster. Rev. Van Dyke gave a brief history of the School, testifying that it was founded in 1789, at which time it was located on the Georgetown University campus. He testified that the School moved to its current location in 1919, that Boland Hall was the only building on the campus until the Chapel was built, and that the School was solely a residential school until the 1940's, when the day school program was developed. Rev. Van Dyke chronicled the development of the various buildings on campus for the Board, as previously recounted herein and in the Statement. He testified that the School is a college preparatory school which aims to send 100% of its students to college. He testified that the School satisfies all State of Maryland requirements in addition to offering theology, retreats, and service programs.

In response to a question from counsel, Rev. Van Dyke testified that he has read the Statement of Justification submitted with the School's variance application, and agrees with it. He testified that he has personally inspected the site and the dormitory project. Rev. Van Dyke testified that construction of the new building will require the relocation of the football stadium approximately 60 feet to the west. He testified that in order to fully accommodate the football stadium, and to avoid interfering with the School's neighbors to the west, they will have to move the track to the north field, where there are currently other athletic fields. See Exhibit 4(b).

Regarding the need for the new dormitory, Rev. Van Dyke testified that since the 1990's, the Middle States Association and the Jesuit review team have expressed concern that the residential and day student programs are moving in different directions. He stated that the School has students from 23 different countries as well as from the United States. Rev. Van Dyke testified that most freshmen residents live in Gunlocke Hall, and that the other residential students live in Boland Hall. He testified that both Gunlocke and Boland Halls are outside of the main "after school" activity area at the School, and that Boland Hall in particular has old systems. Rev. Van Dyke testified that the proposed construction is intended to better integrate the members of the residential community with each other, and to better integrate the residential community into the greater life of the School. In addition, he testified that the new dorm would provide much needed space and privacy for the dorm parents.

With respect to the location of the proposed new dormitory, Rev. Van Dyke testified that other areas were considered. He stated that the area south of Boland Hall was considered, but he testified that that would impact the Inigo Crossing neighbors and is in the area of the School's power plant. He testified that the south field area was considered, but that is across a road and near the neighboring townhomes. Rev. Van Dyke testified that in addition, either of these sites would place the residential program on the periphery of the campus. Rev. Van Dyke testified that the School also considered putting the new dormitory on the Chapel field, and on the area north of that, where the tennis bubble is currently located. He testified that both of these locations were also on the periphery of the campus, and that the tennis court location would require residents to cross the road. Rev. Van Dyke testified that the School finally realized that if they placed the dormitory in the location proposed, it would be in the center of campus life, and would create a new quadrangle near the George and Hanley Center. He testified that after school, all of the School's energy is in activities and athletics. Rev. Van Dyke testified that the proposed location would also satisfy the mandates of the Middle States and Society of Jesus accreditation organizations.

Rev. Van Dyke testified that in determining the design for the new building, representatives of the School had undertaken an extensive tour of boarding schools up and down the east coast, to view both successes and failures in terms of functionality. He testified that having a "barbell" design was determined to be the most important factor to make the layout work well and to ensure that the students are well-supervised. Rev. Van Dyke testified that the proposed building has such a configuration, with dorm parents living on the ends of the building and students living in the center section. He testified that the new building will have much needed common space to replace the student lounge currently located in the basement of Gunlocke Hall. He testified that the new space will be well-lit and well-supervised, and stated that the students will live on floors two through five, separated by class, with the freshmen on two and the seniors on five. Rev. Van Dyke testified that the seniors would be living "under the roof" to minimize the height of the proposed new building. Rev. Van Dyke testified that the first floor of the new building will be common space, including a lounge for all students, an area where students can have a family-style meal, the Office of Residence Life, the International Students' Office, the infirmary, and an assembly hall. He testified that the School has lowered the height of the new building as much as they could while still providing good

space for the students and faculty, and that the proposed building is the minimum size and height necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would entail.

11. Rev. Van Dyke testified that earlier that week, the School had met with representatives from the Crest of Wickford community, with whom the School had not previously been in contact. He testified that he welcomes this new connection with the Crest of Wickford, and stated that when the School hears about issues from neighbors, it works hard to address them quickly. Rev. Van Dyke testified that the proposed new dormitory would have only one entrance and exit for students, that students would have to walk past a check-in/check-out desk, and that there would be no other ground floor access, which he hoped would address any concerns about student behavior.

Ms. Gibson, who lives in the Crest of Wickford community, thanked the School for meeting with them, and testified that this meeting alleviated many of their concerns. She testified that the School has done an admirable job of designing the new building. Ms. Gibson testified that her community remains concerned about the resultant relocation of the track to an area of the campus closer to the Crest of Wickford homes, although she acknowledged that that was not the question before the Board at the variance hearing. In response to a Board question asking if the relocated track would have bleachers, Rev. Van Dyke testified that there were no plans to install bleachers on the north end of campus, noting that there are no bleachers there now for soccer games. Counsel for the School then proffered that for large events, the School may move temporary bleachers to the new track area or field, causing Ms. Gibson to express concern about noise from any temporary bleachers, and to request that the School remove them as soon as those events are concluded. Ms. Gibson testified that she enjoys watching the students play on the fields, and that her concern was really focused on having beautiful playing fields replaced with a track structure. Rev. Van Dyke responded that the School would be replacing two active fields with a single field and track, which Mr. Lapp testified would not have lights. Ms. Gibson praised the School's landscaping and screening along Rockville Pike, and stated that she hoped some lower growth landscaping could be added along Golf Lane to help screen the relocated track.

12. Ms. Joanna Schmickel, AIA, LEED AP, testified that she is a Principal with cox graae + spack architects, and that she is the lead design Principal for this Project and is working with a team of six architects on various aspects of the Project. Ms. Schmickel testified that her firm does a lot of work on institutional uses such as churches and schools. She testified that she spent a lot of time at the School and interviewing School stakeholders to help her team learn about the School, its needs, and in particular, its residential life. Ms. Schmickel testified that based on her reconnaissance, her observations about the School's residential life were consistent with those of Rev. Van Dyke, namely that there was a lack of gathering space, that there was a lack of privacy for adult dorm parents, and that there was no "living room" where residential students could take guests.

Ms. Schmickel testified that numerous factors went into selecting the location for the new building. She testified that the new building needed to be located close to the center of campus and campus activities, and that it needed to be as far as possible from

surrounding neighborhoods. She also testified that there was a desire, as an architectural matter, to reinforce a north-south pedestrian path through the campus by aligning the new building with the George and Hanley Centers. She testified that this required moving the football stadium west, and relocating the track to the north field, later clarifying with respect to the football stadium that the existing road on the west side of the stadium would remain where it is, but that the School would lose one row of parking from the existing parking lot. Ms. Schmickel testified that the new dormitory would form the western edge of a new "Chapel Quad," and that entrance to the building would be from the new quad.

Ms. Schmickel testified that the new building was modeled after the existing campus architecture, with red brick, cast stone, divided light windows, and a slate roof. Ms. Schmickel testified that the first floor would be common space, and that floors two through five would house residents. She noted that it was important not to have sleeping rooms on the first floor for privacy and security reasons. Like Rev. Van Dyke, Ms. Schmickel testified that the seniors would live under the roof, to reduce the height of the building and to keep it more consistent with other existing buildings. She also explained the various uses on the first floor, noting (among other things) that there will be a duty officer station, and a single stairway to the dormitory floors.² She testified that students would share rooms, except for the senior prefects, who would have singles. Ms. Schmickel explained that the adult apartments would be on the north and south ends of the building.

Ms. Schmickel explained how the height of the proposed building was calculated, and shared an exhibit showing a cross-section through the campus, and the relative heights of the proposed building and existing buildings. See Exhibit 5(b). She noted that the existing buildings are taller than 35 feet, and that she did not know how that happened. She testified that the new building is slightly taller than the existing buildings, but that the buildings are generally compatible, and that the body of the buildings is very similar. Ms. Schmickel testified that they were very careful to make sure that the iconic Chapel tower and the Boland Hall cupola would remain the tallest structures on the campus. She described the efforts undertaken by her team to reduce the heights of the various floors in the new building to the maximum extent possible by making adjustments to the placement of mechanical equipment, changing floor elevations, and putting the seniors under the roof. She concluded that the proposed height is the minimum height necessary for the proposed construction.

Ms. Schmickel testified that she is familiar with the standards in the Zoning Ordinance for the grant of a variance, and that she believes all of these standards have been met, as set forth in the Statement of Justification. Ms. Schmickel testified that one exceptional condition of this property is its very large size in a residential zone, which she testified allows the School to position the new building away from the School's property lines as much as possible, in order to distance the new building from neighboring properties and bring the new building into the School's "core" campus. She testified that the School's campus has evolved over time, with an academic, social, and athletic core

² Pursuant to Board questions, Ms. Schmickel testified that there were other stairways, but that they could only be used by students in emergencies.

at its center. She testified that this evolution provides a blueprint for the placement of the new building so that it works with the School's existing facilities. Ms. Schmickel testified that the conditions that necessitate the proposed siting of the new building are not the result of actions taken by the current School administration, but rather a response to conditions that already exist on the property.

13. Mr. Tom Murphy of the Wickford community testified that his community is located across the School's north property line. He testified that they are excited to have the School as a neighbor, and have no concerns about the proposed construction.

FINDINGS OF THE BOARD

Based on the binding testimony of Rev. Van Dyke and Ms. Schmickel, and on the evidence of record, the Board finds that the requested variance from the thirty (30) foot mean and thirty-five (35) foot peak height limitation can be granted. The variance complies with the applicable standards and requirements set forth in Section 59.7.3.2.E of the Montgomery County Zoning Ordinance, as follows:

1. *Section 59.7.3.2.E.2.a. one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59.7.3.2.E.2.a.i exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

Based on the testimony and evidence of record, the Board finds that at 90.3 acres, 75.3 acres of which is devoted to School use, the area of the subject property is unusually large for the R-90 Zone in which it is located. The Board notes that the R-90 Zone has a minimum lot size of 9,000 square feet, which means that the portion of the subject property used by the School is over 360 times the minimum lot size for the Zone. Per the testimony of Ms. Schmickel, unlike development on a typical R-90 property, the large size of this property allows for development to be located away from the School's property lines. Indeed, the subject property is so large that the North Bethesda/Garrett Park Master Plan specifically calls it out, referring to it as "as one of the last large open spaces in the Master Planning Area," and further calls for maintaining as much of the site's existing open space as possible. For the foregoing reasons, the Board finds that the very large size of this property in the R-90 residential Zone constitutes an extraordinary condition, in satisfaction of this Section.

Section 59.7.3.2.E.2.a.v. - the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

Based on the testimony and evidence of record, the Board finds that the School has been located on the subject property for over 100 years, and that since the construction of Boland Hall in 1917, new School buildings have been positioned so that

they are located near the center of the School's campus, away from the property lines. The Board further finds that five of the existing buildings exceed the current 30-foot mean and 35-foot peak height limitations, and that there are no records of variances having been issued for their construction. Finally, the Board notes, based on the testimony of Ms. Schmickel and Exhibit 5(b), that the height of the proposed new building is similar to the height of other structures, and shorter than the iconic Chapel tower and Boland Hall cupola so as not to obstruct their visibility. In short, as noted in the Statement at Exhibit 3, "when viewed in the context of other School buildings, the Project is compatible with the existing skyline of the School." Thus the Board finds that the proposed development substantially conforms with the established or traditional development pattern of this property, which it notes is larger than many neighborhoods, in satisfaction of this Section.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds, as recounted in paragraph 6 under Evidence Presented, above, and based on the Statement at Exhibit 3, that the unusually large size of the subject property and its historic development pattern, with centrally located buildings that exceed current height limitations, are not the result of actions by the applicant, in satisfaction of this Section.

3. *Section 59.7.3.2.E.2.c the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds, per the Statement at Exhibit 3, the Height Study at Exhibit 5(b), and the testimony of Rev. Van Dyke and Ms. Schmickel, that the proposed new building has been designed in accordance with industry best practices, and that the height of the new building is consistent with that of other School buildings and is the minimum needed to accommodate a "modern high school dormitory, which requires the housing of all students by grade in one building." The Board finds, in accordance with the testimony of Rev. Van Dyke and Ms. Schmickel, that the common areas on the first floor of the proposed new dormitory are necessary to afford better integration of the residential program with other School activities, to preserve the privacy and security of the residential students, and to provide for effective supervision of the students, since all student ingress and egress will be past a check-in/check-out desk. The Board further finds, in accordance with the testimony of Rev. Van Dyke and Ms. Schmickel, that the School has undertaken to minimize the height of this five-story building to the maximum extent practicable, locating the seniors "under the roof" and making adjustments to mechanical systems and floor elevations. Finally, the Board finds that the School has endeavored to maximize the distance between the new building and surrounding neighborhoods in order to minimize the impact of the new building on those properties and their sight lines, and to retain as much of the property's open space as possible, in accordance with the North Bethesda/Garrett Park Master Plan (1992). See Exhibits 3, 4(c), and 5(b). Thus the Board finds that the requested variance is the minimum reasonably necessary to

overcome the practical difficulties that full compliance with the Zoning Ordinance would entail given the necessary size and placement of the proposed new building on the property, and the property's location in the R-90 Zone.

4. *Section 59.7.3.2.E.2.d the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan;*

The Board finds per the Statement at Exhibit 3, as recounted in paragraph 8 under Evidence Presented, that the requested variance can be granted without substantial impairment to the intent and integrity of the applicable North Bethesda/Garrett Park Master Plan (1992), in satisfaction of this Section. The Board notes that the Master Plan makes specific recommendations regarding the School's property, and finds that the proposed construction is consistent with those recommendations, continuing the School use and maintaining the property's existing open space as much as possible by efficiently combining all residential functions into one centrally located building, thereby preserving the surrounding green areas of the Property.

5. *Section 59.7.3.2.E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

Based on the testimony of Rev. Van Dyke and Ms. Schmickel, and per the Statement at Exhibit 3, the Board finds that the proposed construction is centrally located on the property, away from the property lines and surrounding residences, in order to minimize the impact of the new building on the School's neighbors. The Board notes that the School has submitted drawings showing the view of the proposed structure from various directions. See Exhibit 4(c). The Board further finds, based on the testimony of record and the Height Study at Exhibit 5(b), that granting the variance will allow construction that is consistent with existing development on the property, and that respects and preserves the School's signature Chapel tower and Boland Hall cupola as the tallest structures on the property. Finally, the Board notes that the School met with the surrounding residential communities, and that while the communities did raise issues at those meetings, those issues did not pertain to the height of the proposed new building. Thus the Board finds that granting the requested variance relief will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variance from the mean height limit of thirty (30) feet and the peak height limit of thirty-five (35) feet is **granted**, subject to the following conditions:

1. The Petitioner is bound by the testimony of its witnesses and by its exhibits of record; and
2. Construction of the new building shall be in accordance with the exhibits of record with respect to its height, placement, and overall appearance.

Therefore, based upon the foregoing, on a motion by Mary Gonzales, seconded by Bruce Goldensohn, Vice Chair, with John H. Pentecost, Chair, and Katherine Freeman in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.


John H. Pentecost
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 1st day of May, 2020.


Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.